

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 9, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 20, SB 23, SB 26,
SB 85 1/4/2001
Executive Action: SB 20, SB 23

HEARING ON SB 85

Sponsor: SEN. JON TESTER, SD 45, BIG SANDY

Proponents: Hal Harper, as citizen
Mary Phippen, Montana Association of Clerks of
District Court
Al Smith, Montana Trial Lawyers Association
Bob Brown, Secretary of State

Opponents: None

Opening Statement by Sponsor:

SEN. JON TESTER, SD 45, BIG SANDY introduced SB 85 which dealt with revising the jury pool from electors to driver's license and Montana identification card holders. He said it would be a different way of doing business and expanded the pool quite significantly. He relayed that in his own district, people didn't vote because they didn't want to be included in the jury pool. The bill was straightforward and forthright. He said the Department of Justice was set to move forward on this measure. The Court Administrators were players and would do what needed to be done. The Clerks of Court provided some amendments that he concurred in because they made the bill more workable for them and the entire system.

Proponents' Testimony:

Hal Harper, testified as a citizen, to encourage a resolution to an old problem of the state. He noted that Montana was one of the few states that used registered voter lists to select juries. Other states used driver's license holders because it was a much bigger list and much more representative. He pointed out that the state's Clerk and Recorders and Clerk of District Courts had made an effort to work out the problems and that during the last decade, three bills had been introduced to try to address the problem that SB 85 would solve.

Mary Phippen, Montana Association of Clerks of District Court, presented written testimony and amendments in favor of SB 85, **EXHIBIT(jus06a01)**.

Al Smith, Montana Trial Lawyers Association, said that one of our basic Constitutional Rights was the right to trial by peers, and that's why the MTLA supported SB 85. He said it allowed jury pools to expand and it was important for civic duty and to get more people participating in the jury process.

Bob Brown, Secretary of State, said that Clerks and Recorders around the state said they had been asked to remove people's names from the list of registered voters for fear of call to jury duty. He found that hard to imagine because serving on jury duty was an important duty and so was voting. He acknowledged that jury duty could be disruptive to personal lives and some people might not want to serve on jury duty, but that it was unfortunate. He felt that SB 85 was a good concept, and it would encourage in at least a small way for people to vote in the elections process.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

CHAIRMAN LORENTS GROSFIELD asked if driver's licenses were used, would it eliminate looking at registered voters. **Mary Phippen, Montana Association of Clerks of District Court**, said yes.

CHAIRMAN GROSFIELD followed by asking how many people, especially senior citizens were registered voters who didn't have driver's licenses, and if SB 85 would eliminate the potentiality for some significant number of those people from serving on juries. **Ms. Phippen** replied that she didn't know the answer to that.

CHAIRMAN GROSFIELD re-referred to **SEN. TESTER**. **SEN. TESTER** said that was where the Montana ID kicked in; for those folks without sight and maybe some of the elderly who chose not to drive and didn't have a driver's license.

CHAIRMAN GROSFIELD asked how many people bothered getting a Montana ID. **SEN. TESTER** replied he didn't know those figures, but said the jury pool would expand significantly even without Montana ID holders.

CHAIRMAN GROSFIELD voiced concerned about those whose license expired, especially the elderly, and asked if they would know anything about the Montana ID, and realize they were no longer on jury duty. He suspected that without some kind of educational campaign accompanying this, they wouldn't know. **SEN. TESTER** acknowledged that was probably right. However, if they were proactive, they would get on the jury pool. He countered with saying that right now people were being proactive to stay off the jury pool by not voting.

SEN. JERRY O'NEIL asked if this bill created a jury list by driver's license and if it would go to the various courts in the state or just for District Courts. **SEN. TESTER** replied that SB 85 created a jury list off driver's licenses and Montana IDs that would be distributed to the state's District Clerks of Court.

SEN O'NEIL followed by asking if it would also go to Justice Courts. **SEN. TESTER** said yes it would.

SEN. O'NEIL asked if all the lists would include the same people. **SEN. TESTER** said no because as the bill stated, if a person appeared on one list, they couldn't be on another. **Nancy Sweeney, Lewis and Clark County Clerk of District Courts**, also answered. She worked both on the amendments and the original bill and provided some information on the process. She said it was not a new addition for people to be on one jury list. Prior to

this, the Clerk and Recorder would draw then send exclusive lists for the individual courts: City, Municipal, Coroners, and District. Once a list for one court was drawn, then those names were excluded from the next list to be drawn. This bill changed the system by removing the Clerk and Recorder. The initial list, consisting of licensed drivers and ID holders would come to Clerks of Court. From there they would draw a sufficient number of jurors for that panel for that year for City, Justice, and District court also. Once those names had been drawn, they would be excluded from the large list of licensed drivers and ID holders. Federal courts were not included in this bill, but they were taken care of by federal statutes that stated if an individual served on a jury anywhere else, they must be excluded from Federal Court. She said Clerks could make sure from the start that duplication in lower and district courts would not occur.

SEN. O'NEIL clarified that the large list wasn't designated as a jury list until further selection. **Ms. Sweeney** said the large list would be handled by Clerks of District Court as the jury commissioner.

SEN. STEVE DOHERTY asked if it would defeat the purpose of SB 85 if the jury lists not only included registered voters, but also licensed drivers. **SEN. TESTER** replied on the surface that would be fine, but he didn't know how those two agencies or those two lists interacted. It could create a bureaucratic nightmare.

Ms. Sweeney also answered saying registered voters would still give up their Constitutional Right to vote to avoid spending a few days on a jury. If the lists merged, a myriad of technical problems with duplicate names would have to be eliminated without the benefit of same fields of information to identify separate individuals. Since SB 85 specifically stated social security numbers would not be used, there would be no reference. She suggested that the Secretary of State could do an advertising campaign to let seniors know about getting an ID. She pointed out that many seniors were physically incapable of serving, but provisions allowed for them to serve if they wanted. She respectfully disagreed with the fiscal note that there would be no fiscal impact on the counties because not all licensed drivers were citizens of the U.S. Clerks had resisted these efforts in the past, but they were willing to put the extra effort and expense to ensure good jury panels.

SEN. DOHERTY suggested the jury lists could come from either the voter registration list **or** the driver's license list. **SEN. TESTER** said for the plan to work with the least amount of administrative costs, the bill would need to be kept as simple as possible. He said he didn't want to exclude anybody and thought it would be

very easy, cost effective, and effective overall if the Secretary of State could alert people to the change.

SEN. MIKE HALLIGAN asked how the jurors were randomly selected after the lists of drivers and ID holders were combined.

Ms. Sweeney responded that the Clerks of Court across the state had computer programs for that. She said the software was not uniform across the state. Uniformity would require the Supreme Court Administrators office to enhance the program. This bill also required that a description of the computer program used be kept. It would have to be a recognized random selection. In June 2000, the Court Administration Office unveiled a program for jury selection that could work hand in hand with this. It was not installed on most of the computer programs in Clerk of District Courts offices across the state.

SEN. HALLIGAN said given the experience of the last election with respect to fairness issues and people's inability to vote because of not marking some things, the program was critical because of the Constitutional obligation to have a jury of peers. The Court Administration or somebody would have to deal with this statewide to have a system in place that was Constitutionally sound with random selection of jurors. He said he'd work on that.

SEN. AL BISHOP asked how many licensed drivers were in the state.

SEN. TESTER said those numbers weren't given.

SEN. BISHOP wanted to know the number of registered voters/electors because he was curious to see how many more bodies would be on the driver's license list than on the voter lists. **Anita Oppedahl, Chief of the Field Operations Bureau**, charged with issuance of driver's license and ID cards, said there were 690,000 licensed drivers in Montana.

Secretary of State Bob Brown said the state had both active and inactive registered voters, so the exact number of registered voters was unknown. Registered voter lists were deceptive because many of those people had moved out of state. He said election jurisdictions in the counties could be polled to see how many active, registered voters were on the lists. He agreed his office could contact the senior's organizations and the Association of the Blind maybe on an annual basis to advise them to the change in the law. They would be reasonably informed to take it upon themselves to get an ID if they wanted to be considered for jury duty.

CHAIRMAN GROSFIELD said the fiscal note had a number of technical notes on it. Some of them were inherent of the current system, for example: how was a felon or deceased person identified. **Ms.**

Sweeney replied that jury questionnaires went out to give the person the opportunity to claim they were not a felon, or they were a felon, that they were not a citizen of the state, that they were too medically infirm to serve. At that time the jury commissioner or the judge took those requests for excuses into consideration and excused them off the list. Currently, if people didn't reply to the questionnaire, a sheriff went to have them respond to the questionnaire and at that time they could again ask for excuse.

CHAIRMAN GROSFIELD clarified that **Ms. Sweeney** didn't see this as more burdensome than what they were already subjected to. **Ms. Sweeney** said yes, with the exception of having a section of non-citizens that would have to be excluded. She said they'd have to send out more jury questionnaires and there were some costs in that as well as the sheriff tracking them down. It would add a little, but it put the burden on the department. She said it may require the assistance of the Clerks and Records to make it work. Maybe use existing software until software was developed. It was their intent to be able to get assistance from whoever to make SB 85 work to its best capability.

Closing by Sponsor:

SEN. TESTER closed on SB 85, saying they tried to be inclusive in the process and he appreciated the comments from the Secretary of State and the comments and amendments by the Clerks of Court. He initially balked at the effective date extending out a year, but thought it would be the right thing to do to make it right without mistakes.

HEARING ON SB 23

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: **Joe Mazurek, member of the National Conference of
Commissioners on Uniform State Laws;
representing self
George Bennett, Attorney for the Montana Bankers
Association
Bob Pyfer, Executive Vice President of the Montana
Credit Union League**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, introduced SB 23, stating that Montana had always been on the cutting edge with respect to

the passage of uniform laws and particularly in the area of uniform commercial code, in this case the secure transactions portion of that. With all of the changes with the information age and all the tangible property issues and telecommunications issues associated with those things, the state passed major revisions to bring us up to date and Montana was one of the few in the nation. SB 23 was designed to clean up the effective date of the original bill and the conference was able to determine whether there were any problems with the original bill. Therefore, SB 23 was the errata, changes, and revisions needed to bring the bill into compliance with what may have been left out of the original bill.

Proponents' Testimony:

Joe Mazurek, member of the National Conference of Commissioners on Uniform State Laws, provided some background on the conference. It was basically a states' rights organization that had representatives from all states and the goal was to draft and enact statutes or propose them to the Legislatures for adoption to promote uniformity among the states. It started in the late 1800's with the purpose to ensure that the states' retained control over the development of the law in the states as opposed to ceding all that to the U.S. Congress. One of the foremost products was the Uniform Commercial Code. It had been adopted in all the states and it essentially governed commercial business in this country. Article 9 was the title that allowed lending institutions to obtain a security interest, or collateral in the loaned goods. Montana adopted a new version of Article 9 during the last Session in order to get the statute on the books and to provide an opportunity for practitioners: bankers, attorneys, people representing creditors and debtors, to know that this was out there. He said this bill corrected errors that were found at the conference, not that were made in the process here last session. Twenty nine states had adopted the new version and the balance were expected to adopt it before July 2001. The bill was big because it contained both current and new sections of the law effective July 2001. Any errors or changes which were made had to be incorporated into the full text of the section. The amendment in section 2 clarified that a security interest could arise out of a lease transaction under certain circumstances. The general changes in Article 9 were adopted before to modernize it and to recognize that personal property was more than just hard goods as in the past. For example, the definition of chattel paper was changed to recognize that many businesses leased computers and software that could require a security interest. The bulk of the changes corrected errors in cross references that occurred in the drafting process at the conference level. It didn't change the substantive law. A couple amendments proposed: 1) Article 9 had historically not applied to transactions of

local governments issuing bonds, amendment 2 carried forward an exemption that was granted to transfers by governmental or governmental subdivisions or agencies. It would remain the law. 2) A codification instruction which was needed. The purpose of the bill was to ensure maintained uniformity and consistency with the Uniform Commercial Code around the states.

George Bennett, Attorney for the Montana Bankers Association, said the association wanted to be uniform so that we wouldn't be in the situation we were years ago where each state had its own Uniform Negotiable Instruments Act. He asked that the adopted sections of Article 9 carry the same numbers as the Uniform Code because students of the Uniform Code referred to texts that referred to the Uniform Code.

Bob Pyfer, Executive Vice President of the Montana Credit Unions League, said Credit Unions support the errata and corrections because uniformity among the states was important.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES wanted clarification on the bottom of page 12 that the text of the changes was taken straight out of recommended language by the Commissioners Association and that it clearly identified security interests. **SEN. HALLIGAN** assured him it was consistent with the language in the Uniform Law now and was consistent with other sections identifying the stipulations that differentiated between a lease and a security interest.

CHAIRMAN LORENTS GROSFIELD said he thought the section clearly stated it was one thing **or** the other. **EXHIBIT(jus06a02)**

SEN. GRIMES asked what was contingent and what wasn't. **Joe Mazurek, member of the National Conference of Commissioners on Uniform State Laws,** explained that the entire underlined language was in addition to the bill of last session, but it dealt with a very specific circumstance where a lease of goods could become a security interest as in the case of computers and software. The lease could become obsolete after a period of time. This section of the bill tried to outline when a security interest could occur, by applying tests.

SEN GRIMES asked for a layman's example of who this could apply to currently. **Mr. Mazurek** reiterated that it would not become effective until July 1, 2001, so it would apply to transactions occurring there after. If there wasn't intended to be a security interest before, it wouldn't become one retroactively. However,

an example would be the lease of computers and software where it was more like a purchase than a lease. The language was agreed upon at the conference. It was not unique to Montana, but was intended to deal with the situation in which a lease could actually create a security interest in addition to a purchase under the circumstances outlined here.

CHAIRMAN GROSFIELD questioned whether the Code Commissioner understood the point **Mr. Bennett** suggested about the numbering and if it was feasible. **Greg Petesch, Code Commissioner**, acknowledged he understood and he wouldn't do it.

CHAIRMAN GROSFIELD asked for clarification. **Mr. Petesch** explained that the Uniform Law Commissioners in revising Article 9 totally changed concepts from the previous version of Article 9 and reused those existing number designations that the conference used. He referred to a memo he wrote to the Uniform Law Commissioners when the issue first arose explaining why he wouldn't change the numbering, **EXHIBIT(jus06a03)**.

Closing by Sponsor:

SEN. HALLIGAN closed on SB 23, emphasizing the necessity of remaining on the cutting edge with respect to the modernization of our Uniform Commercial Code.

HEARING ON SB 20

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: **None**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA introduced SB 20 at the request of the Law, Justice, and Indian Affairs Committee. He read 1b of the Montana Rules of Civil Procedure law that limited the right of appeal: "a party may appeal from a civil judgment or order except when made final by law." He then referred to the relatively strict section of SB 20 before the changes about when a District Court Judge could issue a contempt citation to someone. Over the years, the Supreme Court created an exception to this strict law for family law appeals where someone was found in contempt in family law cases. **SEN. HALLIGAN** provided a sentence from a case, **EXHIBIT(jus06a04)**. He said sometimes a civil or criminal contempt order needed to be effective right

away. However, there could be times when it needed to be repealed. **{Tape : 2; Side : A}** Therefore, SB 20 clarified and codified the exact language from the Supreme Court Opinion.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. HALLIGAN closed on SB 20.

HEARING ON SB 26

Sponsor: SEN. RIC HOLDEN, SD 1, GLENDIVE

Proponents: Webb Brown, Montana Chamber of Commerce
 Riley Johnson, National Federation of Independent
 Business
 Bob Worthington, CEO of the Montana Municipal
 Insurance Authority
 Lorna Karn, Montana Farm Bureau and Mountain West
 Farm Bureau Mutual Insurance Company
 Pat Keim, Burlington Northern Santa Fe Railway
 Greg Van Horssen, State Farm Insurance Company
 Jacqueline Lenmark, American Insurance Association
 Dwight Easton, Farmers Insurance

Opponents: Al Smith, Montana Trial Lawyers Association
 Claudia Clifford, Insurance Commissioners Office
 Wendy Young, WEEL
 Rebecca Moog, Montana Women's League

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, GLENDIVE, introduced SB 26, a Tort Reform bill. It was important to cut down the number of lawsuits in society and to cut down the number of people exploiting and avoiding the insurance laws of Montana. SB 26 built on the responsibility to carry automobile liability coverage. Essentially, if a person got into an accident, owned the vehicle and didn't carry insurance, they would not be able to recover non-economic damages over and above Montana's financial responsibility limit of \$25,000. SB 26 allowed one exception: it

went into effect the second time a person was involved in an accident and found to also not be carrying the mandatory insurance. He argued that a large percentage of Montanans were breaking the financial responsibility laws by not carrying auto insurance, and SB 26 addressed that concern. The other part of the bill dealt with the responsibility of people when they were doing something wrong. The second section of this bill said vandals or felons who sustained injury during the course of their illegal action could not sue the business or home owner for liability damages.

Proponents' Testimony:

Webb Brown with the Montana Chamber of Commerce, said the organization supported a similar bill in the last session and that this bill was one of the important bills on the voter review of the legislators. He argued that SB 26 put the responsibility and accountability back into an absolutely essential system. He said he didn't think that interest premiums would take a nose dive if this bill passed, and business owners knew they had a certain degree of protection that they haven't had before, but it certainly wouldn't increase them either. He pointed out that non-economic damages would be available to the uninsured motorist up to the \$25,000 limit. It was just the huge awards that may be given above and beyond that non-economic field that would be limited and excluded in this case.

Riley Johnson, National Federation of Independent Business, stood in support of SB 26 because the biggest concern for a small business was the liability, or the potential liability, of being dragged into court. He felt SB 26 was fair. On the uninsured driver, he pointed out that they were illegal already, so it was more than fair to offer them the \$25,000.

Bob Worthington, CEO of the Montana Municipal Insurance Authority, said cities and towns were also trying to defend themselves again these types of exposures. He argued SB 26 would be a benefit to cities, towns, and the Legislators' constituents across Montana.

Lorna Karn, Montana Farm Bureau and Mountain West Farm Bureau Mutual Insurance Company, said for the various reasons already stated, the organization and insurance company supported this bill.

Pat Keim, Director of Public Affairs for Burlington Northern Santa Fe Railway, provided two reasons for supporting SB 26. 1) BNSF were operators in the state of Montana of literally hundreds of vehicles and had a large exposure because they were a self

insured company. They frequently found themselves with exposure to uninsured drivers such as this situation would address. 2) As a property holder throughout the state with long linear tracks of property, they found themselves the victims of vandalism on their property. There were instances where people who had been on the property illegally committing acts of vandalism, had indeed sought damages from the company from injuries sustained.

Greg Van Horssen, State Farm Insurance Company, said State Farm had in the past and would continue to support this concept in the law for the reasons previously articulated.

Jacqueline Lenmark, American Insurance Association, claimed they supported this type of legislation in the past and recommended a Do Pass on this one.

Dwight Easton, Farmers Insurance, supported SB 26 and reiterated that it was different from the last proposal in that it addressed specifically the habitual, uninsured offender, not the occasional, one-time offender. He pointed out that SB 26 included economic damages such as medical bills, lost wages, and the like, but it did limit non-economic, general damages over the financial responsibility law.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, stood in opposition to SB 26. He presented written testimony, **EXHIBIT(jus06a05)**.

Claudia Clifford, Insurance Commissioners Office, said the insurance commissioner didn't condone uninsured motorists, but the fact remained that some people simply couldn't afford insurance, and they drove on our roads. The Commissioner felt SB 26 was a very punitive measure for many of the reasons **Mr. Smith** outlined. She argued it was especially punitive when someone else was at fault and recovery was within the minimum liability limits of auto insurance: \$25,000 bodily injury, \$10,000 property, and \$50,000 bodily injury for the entire accident. She said the Commissioner felt other bills of this session were better incentives or preventive measures to make sure motorists carried insurance. See **EXHIBIT(jus06a06)** for a list of the bills. She concluded by suggesting they should utilize the other bills to avoid a very punitive route that told horribly injured people that they couldn't be fairly compensated.

Wendy Young, of WEEL, a grass roots organization for low income families, spoke for the families who would be affected by the first part of SB 26. She argued that not having car insurance was

often because of economic hardship, and the fine for driving without insurance was enough of an incentive to carry car insurance. She believed society wanted families to carry insurance, but they also wanted people to be covered for the damages that they incurred when somebody else harmed them. She finished by saying the insurance companies must pay when a driver that they insured was in an accident.

Rebecca Moog, Montana Women's League, stated that in Montana, families lived paycheck to paycheck. She provided an example: Monday your insurance payment was due, you didn't receive your check until Friday, Wednesday you're driving along to work or taking your kids to school. Somebody runs a red light, hits you and you have severe damages. You are disfigured, you're paralyzed. As everybody said, it would be very punitive to not give this family the damages they deserved. She objected to punishing families for being poor. She urged the need for bills that helped families get and receive insurance. She argued that this bill put more money into pockets of insurance companies.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL questioned whether the Montana Supreme Court had any limit on punitive damages. **Al Smith, Montana Trial Lawyers Association**, replied that procedures must be followed, but the amount itself was not limited. He followed by saying for punitive damages, it had to be a unanimous verdict of the jury although in civil actions it only took a majority. *{Tape : 2; Side : B}*

He thought **REP. DAVIES** had a bill in this session to limit punitive damages to two times compensatory damages.

SEN. STEVE DOHERTY stated the testimony indicated four states, CA, LA, MI, and NJ, adopted similar legislation over the last five years. He wanted to know the percentage of people, or the kind of improvement between the rate of uninsured versus insured drivers in those states that had adopted this type of legislation. **SEN. HOLDEN** replied he wasn't familiar with their statistics.

SEN. DOHERTY pursued his question asking if any of the people in the insurance industry were familiar with any statistics that would indicate that the number of uninsured drivers in those states had dropped as a result of adopting this kind of legislation. **SEN. HOLDEN** said no, they weren't investigating those states' statutes.

SEN. DOHERTY stated that if the reason for proposing this kind of legislation was to cure a societal ill of uninsured drivers, it

would be interesting to find out from those states who had experimented with it if there had been any kind of increase in insured motorists in those states. He offered that if those folks had done it before, maybe they could help provide some kind of indication. **SEN. HOLDEN** countered with any piece of legislation had a penalty section in it; that penalty sections' effectiveness were always open to debate, and that it was nearly impossible to quantify any particular statute as to the rise and fall of compliance.

SEN. DOHERTY persisted that if this bill was designed to address a problem, and it had been tried in other places, then determining whether it worked or not and what happened would be useful in order to determine whether it was a useful thing to do in Montana. **SEN. HOLDEN** claimed that it wasn't just in the penalty area, but also what insurance premiums do when it does work and when pieces of legislation like this were passed. Once the people who were in non-compliance with the law were removed from the equation, then insurance premiums would be affected in a positive way.

SEN. DOHERTY then asked for the number of verdicts that had been given to uninsured motorists as a result of a collision with an uninsured motorist within the last five years in Montana. **SEN. HOLDEN** responded it was a weekly occurrence. Weekly claims were made because someone hit another person who lacked insurance. He reported that it was becoming more and more common to hit somebody who did not carry insurance. As a consumer, he said he could say those individuals were upset when they found out that the person involved on the other side did not carry insurance and they knew who would pay the bill: the responsible guy who carried insurance according to law.

SEN. DOHERTY said maybe he wasn't clear, because he was upset as well when he was hit by somebody who didn't have insurance. However, the question: in those instances where the uninsured individual was not at fault, and was hit, how many times in Montana, had there been significant verdicts in these circumstances? He asked this because he read the advance sheets of the Supreme Court and tried to keep up on that. **SEN. HOLDEN** said he also read those same reports and he didn't know if anybody kept those statistics, but most of those cases were settled with an insurance adjuster prior to them getting to court. Hence, they didn't show up in the court reviews.

SEN. DOHERTY questioned how SB 26 dealt with Article 2, section 16 of the Montana Constitution which provided a remedy and redress for those individuals who were damaged, a full legal remedy and redress. **SEN. HOLDEN** stated that this issue had been

addressed by the Supreme Court, various court hearings, and other attorneys had tried to challenge Montana financial responsibility laws. He reported they had fallen short of repealing and changing those laws and telling people that those laws of Montana were not responsible. The court had recognized that people received full redress in the court system. He also noted that this bill did not limit their ability to get economic damages over and above the financial responsibility law limit. SB 26 only addressed non-economic damages. Somebody with large medical bills and lost wages could still get those costs paid to them over and above what the Supreme Court had ruled OK.

SEN. DUANE GRIMES questioned the bill on page 10, where it listed the requirements for recovering damages (a, b, and c). He thought the section said that if the person was not insured, and the person could not establish financial responsibility, which implied that the uninsured had some fault that they had to pay for; they in some way caused the accident. However, he inquired if the person didn't have any financial responsibility in the accident, were they entitled to go after non-economic damages?

SEN. HOLDEN said yes they would. They would be able to go after non-economic damages up to the \$25,000 limit which was the current law.

SEN. GRIMES re-directed his question. **Greg Van Horssen, State Farm Insurance Company** said it seemed that the subsections under section 5 on page 2 line 8 of the bill, were conjunctive in nature. All three of the requirements listed as a, b, and c must apply before a person would be prohibited from the normal recovery.

SEN. GRIMES continued by asking if they had no financial responsibility, but essentially, they were responsible, would this apply to them? **Mr. Van Horssen** replied that c on line 14 would be read to provide: that if there's no financial responsibility required for the individual under 61-6-132 then perhaps this prohibition would not apply to that individual.

CHAIRMAN LORENTS GROSFIELD asked for comment on a couple of the scenarios raised by **Mr. Smith** regarding Firestone Tires. On line 9: "arising out of the maintenance or use of a motor vehicle", what did that mean in the context of this bill? **SEN. HOLDEN** said that had nothing to do with this bill, it was not a products liability piece of legislation. "The maintenance and use of a vehicle" was common language talking about a motorist that owned and operated a vehicle. He said he wouldn't know how to fit that scenario into these statutes. He said he wouldn't look to these statutes for a defense or an action.

CHAIRMAN GROSFIELD said he thought line 28 page 2 could pertain to anybody, maybe even the victim. He didn't think that was the intention. **SEN. HOLDEN** asked for clarification.

CHAIRMAN GROSFIELD read from the bill: "may not recover damages of any kind for the person's injuries incurred during the person's immediate flight from a felony." **SEN. HOLDEN** corrected that reading saying it said, "during a person's commission of, or immediate flight. . ."

CHAIRMAN GROSFIELD said yes, but it says "or" it didn't say that person had to be the felon. It could apply to anybody. **Valencia Lane, Legislative Staff**, said the problem was with the requirement to use gender neutral language. Without gender neutral language, the second and third occurrences of "the person" would be "his". She didn't think it was intended to be read the way **SEN. GROSFIELD** suggested. It was supposed to be a person could not recover damages for his injuries incurred during his commission of . . . She said if it could be read to include someone other than the felon, it should be re-written to make sure it was not intended to be that way.

SEN. AL BISHOP stated that the bill said that an injured person could not recover non-economic damages. **SEN. HOLDEN** asked which line he was referring to. **SEN. BISHOP** clarified line 9, page 2. Down below on line 27 "A person may not recover damages of any kind for the person's injuries." Would that include family members? Would family members be able to recover damages for something that the injured person did? **SEN. HOLDEN** said the statute spoke to the person committing the crime. Therefore, cause of action on behalf of her would still be allowed.

SEN. MIKE HALLIGAN pointed out the exception that there was no limit on non-economic damages if someone was injured as a result of a D.U.I.? **Ms. Lane** responded saying yes, that the person who would normally be limited in recovery under this section, could receive more if they were injured by someone who was driving drunk or impaired. The injured could sue for non-economic damages above the \$25,000. **SEN. HOLDEN** said the purpose was to avoid diminishing the drunken driving laws in this state; they didn't want to give someone a way out if they were driving drunk.

SEN. HALLIGAN said that was a laudable goal. The trouble though was with the full legal redress in the Constitution and then carving out an exception for a DUI victim. It created an arbitrary class of people who received benefits, non-economic damages, as opposed to those who couldn't receive them. For example, "if I'm in a state of rage as a result of my dissolution of marriage and I commit a felony in the meantime like punch my

wife and I go out and injure someone, then the non-economic damages apply, but don't with a D.U.I." A court looking at that would ask for the rational basis for this exception and **SEN.**

HALLIGAN didn't know if one existed. **SEN. HOLDEN** responded that in 1995 when many of the drunken driving laws were dealt with, that same argument was brought up by the ACLU and others: "How can you possibly in good conscience carve out sections of law that deal with these people? They've got an illness, a problem?" It is a public policy decision whether or not to have tough drunken driving laws in Montana and so far the Supreme Court had agreed with the Legislature. This bill supported earlier legislation in that regard.

SEN. HALLIGAN said he understood, he just wanted to point out those who didn't have D.U.I. issues, but were left out. Then he asked if someone was a burn victim and disfigured for life, would they be limited to \$25,000 because they didn't have insurance.

SEN. HOLDEN replied no. They would be able to receive medical bills, lost wages, other sorts of economic damages related to their injury, over and above their \$25,000.

SEN. HALLIGAN said OK, but for the non-economic, \$25,000 was the limit? **SEN. HOLDEN** said yes, that was right.

SEN. HALLIGAN commented on the immunity in regard to state employees, driving state vehicles and the limitation on liability.

CHAIRMAN GROSFIELD followed up on that, asking if there was such a thing as a state employee driving a state vehicle without insurance. **SEN. DOHERTY** answered, saying no there wasn't, but state employees could run into someone without insurance.

SEN. GRIMES said he was confusing financial responsibility with liability for the accident in his previous question, and understood it now. He then clarified the bill would limit non-economic damages for the uninsured whether they were liable or not. **Jacqueline Lenmark, American Insurance Association** answered that he was correct.

SEN. GRIMES then asked if that was the case in the other states who had enacted this type of legislation. **Ms. Lenmark** replied that she had not reviewed the statutes of the other states and that this bill came from testimony provided last session. **SEN. HOLDEN** confirmed that.

Closing by Sponsor:

SEN. HOLDEN closed on SB 26. He said that the legislature accumulated more information about this bill as it passed through

the last Session and that the information that was valuable last Session was inserted into this piece of legislation. Therefore, he wanted to bring this bill to it's conclusion this session. He pointed out the *Helena Independent Records'* opinion page that listed basically 3 things in the state of Montana that hampered economic development in the state. 1) Tax rates 2) airline connections to the outside world 3) and the most important to this legislation: the considerable amount of litigation that was taking place in the state of Montana relative to other states around us and how that litigation affected our businesses and our home lives. He reiterated that this was a Tort Reform package. He argued that if the legislature didn't at some point decide who was responsible for their actions, and who was going to be responsible in accordance to the Montana financial responsibility laws that were already on the books, then everyone's insurance rates would go up. He said the insurance companies didn't get the money; it came out of the people's pockets. Also, the Montana Supreme Court had upheld the Montana financial responsibility laws, and this bill did not put limits on the lost wages and the medical bills that a person could claim.

EXECUTIVE ACTION ON SB 23

Motion: SEN. GRIMES moved that **SB 23 DO PASS AS AMENDED.**

Discussion: SEN. HALLIGAN said that it included a governmental entity on page 2. It did not include agricultural liens. It left agriculture liens as they always had been.

Vote: Motion that **SB 23 DO PASS AS AMENDED** carried 8-0. SEN. McNUTT excused.

EXECUTIVE ACTION ON SB 20

Motion/Vote: SEN. BISHOP moved **SB 20.**

Discussion: None

Motion carried 8-0. SEN. McNUTT excused.

ADJOURNMENT

Adjournment: 11:15 A.M.

SEN. LORENTS GROSFIELD, Chairman

ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT (jus06aad)